

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCUS KILGORE,

Defendant.

ORDER

09-cv-328-bbc

In May 2009, defendant filed a premature motion for post conviction relief under 28 U.S.C. § 2255. I denied that motion because his direct appeal was pending. That appeal was decided in January 2010. Almost immediately, defendant wrote to the court to request § 2255 forms, which were sent to him. In the process, the court mistakenly reactivated the case that was opened in May 2009 rather than awaiting a new motion for relief by defendant.

Because defendant has a year from the date on which his conviction became final in which to file a post conviction motion, there is ample time for him to file a motion for post conviction relief to initiate a new case. Closing this case will not prejudice defendant in any respect.

ORDER

IT IS ORDERED that this action is closed.

Entered this 12th day of February, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge